

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JONATHAN LEE RICHARDSON

Plaintiff,

v.

UNIVERSITY OF TEXAS

SYSTEM, *et al.*,

Defendants.

§

§

§

§

§

§

§

§

CIVIL ACTION NO. 5:19-CV-271

DEFENDANTS' JOINT NOTICE OF REMOVAL

Defendants, The University of Texas System (“UT System”), The University of Texas at San Antonio (“UTSA”), and UTSA Chief of Police Gerald Lewis (referred to collectively herein as “Defendants”), by and through the Office of the Attorney General for the State of Texas file this Notice of Removal pursuant to 28 U.S.C. § 1446(a) on the basis of a federal question.

This is an action in which the district court has original jurisdiction founded on a claim or right arising under the Constitution, treaties, or laws of the United States. 28 U.S.C. § 1331. A district court has removal jurisdiction in any case where it has original jurisdiction. 28 U.S.C. § 1441(a); *Gutierrez v. Flores*, 543 F.3d 248, 251 (5th Cir. 2008). A federal question exists “if there appears on the face of the complaint some substantial, disputed question of federal law.” *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995). This case is removed on grounds that Plaintiff is bringing claims pursuant to 42 U.S.C. § 1983, alleging Defendants violated his Fourth and Fourteenth Amendment rights.

Plaintiff Richardson sues UT System, UTSA, Chief Lewis, in his official and individual capacity, Sean Callahan, in his official and individual capacity, and the City of San Antonio in the 45th Judicial District Court of Bexar County, Texas. 28 U.S.C. § 1446(a); Plaintiff’s Original Complaint ¶¶ 1-6. Defendant Sean Callahan has not yet been served as of the filing of this notice.

Pursuant to 28 U.S.C. § 1446(b)(2)(A), the City of San Antonio consents to and joins in this removal.

Plaintiff's suit in the state county court alleges violations of his Fourth and Fourteenth Amendment rights guaranteed by the United States Constitution. More specifically, Plaintiff brought his claims pursuant to 42 U.S.C. § 1983 for Officer Callahan's alleged excessive use of force, assault, and unlawful arrest of Plaintiff. *Id.* at ¶ 1. Plaintiff further asserts that UTSA and Chief Lewis failed to adequately train and/or supervise Officer Callahan. *See id.* at ¶¶ 67-69, 74-79. Plaintiff did not plead any claims specific to UT System. *Id.* ¶¶ 39-79.

All pleadings filed in state court are attached hereto, and Plaintiff demanded a trial by jury in his state-court action.

This notice is timely where Cause No. 2019-CI-03044 was served on Defendants UT System on February 28, 2019, and UTSA and Chief Lewis were served on February 25, 2019. The notice of removal must be filed within 30 days of receiving "a copy of the initial pleading setting forth the claim for relief." 28 U.S.C. § 1446(b), *Cole ex rel. Ellis v. Knowledge Learning Corp.*, 416 F. App'x 437, 439 (5th Cir. 2011).

This notice is also timely with respect to Defendant City of San Antonio, because pursuant to 28 U.S.C. § 1446(b)(2)(C), "[i]f defendants are served at different times, and a later-served defendant files a notice of removal, any earlier served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal." The City of San Antonio consents to removal.

Defendants will file a motion to dismiss within the seven-day time limit after this notice of removal in accordance with FED. R. CIV. P. 81(c).

Defendants represent to this Court that Plaintiff will be served with this notice and copies

of all pleadings associated with Defendants' Notice of Removal. A copy of this notice of removal, with attachments, will be filed with the state court.

Defendants UT System, UTSA, and Chief Lewis remove this action to the United States District Court for the Western District, San Antonio Division, pursuant to 28 U.S.C. § 1441, and that Defendant be granted such other relief, including all costs, expenses, and attorneys' fees to which the Court deems just and proper.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

JEFFREY C. MATEER

First Assistant Attorney General

DARREN L. MCCARTY

Deputy Attorney General for Civil Litigation

SHANNA E. MOLINARE

Chief, Law Enforcement Defense Division

/s/ Kelsey L. Warren

KELSEY L. WARREN

Assistant Attorney General

Attorney-in-Charge

State Bar No. 24095736

Office of the Attorney General

Law Enforcement Defense Division

P. O. Box 12548, Capitol Station

Austin, Texas 78711

Office (512) 463-2080

Fax (512) 370-9373

kelsey.warren@oag.texas.gov

ANN HAHN

Assistant Attorney General

State Bar No. 24073654

Office of the Attorney General

Law Enforcement Defense Division

P. O. Box 12548, Capitol Station

Austin, Texas 78711

Office (512) 463-2080

Fax (512) 370-9893

ann.hahn@oag.texas.gov

ATTORNEYS FOR DEFENDANTS

UT SYSTEM, UTSA & CHIEF LEWIS

/s/ Shawn Fitzpatrick

SHAWN FITZPATRICK

State Bar No. 00787474

FITZPATRICK & KOSANOVICH, P.C.

PO Box 831121

San Antonio, Texas 78283-1121

(210) 408-6793

skf@fitzkoslaw.com

**ATTORNEY FOR DEFENDANT,
THE CITY OF SAN ANTONIO**

NOTICE OF ELECTRONIC FILING

I, **KELSEY L. WARREN**, Assistant Attorney General for the State of Texas, hereby certify that I have electronically submitted for filing, a true and correct copy of the above and foregoing in accordance with the Electronic Case Files system of the Western District of Texas, on March 18, 2019.

/s/ Kelsey L. Warren
KELSEY L. WARREN
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **KELSEY L. WARREN**, Assistant Attorney General for the State of Texas, hereby certify that a true and correct copy of the above and foregoing has been served on all counsel of record via the Court's electronic noticing system, on March 18, 2019.

/s/ Kelsey L. Warren
KELSEY L. WARREN
Assistant Attorney General